

SUMMARY OF SEPTEMBER 5, 2008 PUBLIC HEARING

Ann Butterworth gave a brief introduction and overview of the Tennessee Public Records Act, the responsibilities of the Office of Open Records Counsel (OORC) pursuant to PC 1179, Acts of 2008, and the purpose as well as the format of the hearing. Ann also announced that anyone wanting to send comments or questions on the fee schedule could do so through the close of business on September 5, 2008, and those comments would be considered by the Advisory Committee on Open Government (ACOG) at the September 15, 2008 meeting. Members of the ACOG introduced themselves and stated the organization they represent. The following members were present: Dorothy Bowles, Mike Cutler, Joe Dawson, Frank Gibson, Janet Kleinfelter, Amy Martin, Chris Modisher, Judy Poulson, Jay West, and Dick Williams.

Elisha Hodge read the proposed fee schedule into the record.

Fonda Douglas announced the names of those individuals who had requested to comment on the proposed fee schedule.

The following is a list of the speakers and a summary of the comments presented:

Larry Burris – MTSU, Professor of Journalism; Recommended waiver of fees when the public interest will be served. Fees should not hinder the public's ability to obtain copies of records.

Jami Awalt – Tennessee State Library and Archives; Fees should take into account the fact that not all records custodians store records in a manner that makes them easily accessible when requests are made and citizens should not be penalized for that. Fees are inconsistent with those for Clerks of Court in T.C.A. 8-21-401. Schedule also seems to assume Public Records Commissions retain records and that is not true.

Phil Williams – Investigative Reporter Channel 5 News; Aggregation is contrary to public interest. A records custodian should not be able to assess a fee for work done in preparation for inspection when the requestor later requests a copy of the records.

Faye Sandosky – citizen of Smithville; Supports all recommendations for fees and labor thresholds. Related three (3) experiences she had requesting records. Recommended more study be done on the frequent and multiple request policy.

John Stern – Exec. Director of Neighborhood Resource Center; Expressed concerns about how schedule will affect the public interest. Recommended a provision be included requiring electronic access to records. Suggested different fees for information requested for commercial use rather than citizen use. Submitted a copy of the fee schedule his non-profit uses when public records requests are made.

Kay Solomon Armstrong – Clerk and Master Greene County Chancery Court; The fee schedule should allow for costs to be assessed for inspection of public records. The schedule should also allow for fees to be assessed for researching whether a record or portion thereof is public or confidential.

Dan Haskell – Lobbyist for Tennessee Association of Broadcasters; Better define what is meant by “department.” Threshold is very problematic. According to his reading of the TPRA the method of delivering records is at the discretion of the requestor. Governments should utilize technology to reduce their costs. Questioned whether the schedule deals with how one governmental entity deals with request from another governmental entity.

Kim Pierce –citizen, Sevier Cty; Outlined her problems with Sevier County when she requested records and said that schedule of fees should be reasonable.

Alan Johnson – Nashville Bar; Public records belong to the public, government business is the people’s business. Tennessee citizens pay taxes that pay for the salaries of records custodians, so citizens should not be required to pay labor. Only the actual cost of a copy should be assessed.

Ken Jakes – citizen, Davidson County; Fees should be consistently assessed and not discretionary. Shared his experiences in trying to obtain records from Metro and the different fees he paid from department to department.

Philip Hostettler - citizen, Davidson County;. Fees should be consistently assessed and not discretionary. Shared his experiences in trying to obtain records from Metro and the different fees he paid from department to department.

Jim Thomas – City Manager of Goodlettsville; Unconcerned with 20 and 50 cents for copies of public records. Concerned with the additional responsibility record custodians will have under the schedule in trying to decide whether a record has more relevance in color and in keeping up with time spent on requests for purposes of the policy for frequent and multiple requests.

Roger Horner – City Attorney, City of Brentwood; Supporter of open government and therefore feels there should be no labor charge for “routine” request. Larger

request should have a labor charge and there should be no threshold that has to be met before labor can be assessed.

Mark Rawlston – Deputy Chief of Police, City of Chattanooga; Opposed to the tier structure of charges. The threshold for labor should be one (1) hour for all governmental entities. Employee benefits should be included in labor costs.

Mark Sirois – Johnson City Police Department; Employee benefits should be included in the fee for labor and the local governments should have the ability to come up with their own fees.

Sam D. Kennedy – President of Kennedy Newspapers; Threshold should be four (4) hours for all governmental entities and aggregation policy leaves room for too much discretion on the part of the records custodian.

Elizabeth Kennedy Blackstone- Editor, Lawrenceburg City Advocate; Labor threshold is too arbitrary. One threshold should be applied to all governmental entities. Frequent and multiple requests policy too arbitrary.

Josh Jones – MTAS Legal Consultant; Schedule is too complex and confusing. Citizens should not be charged labor in per page fee and then assessed a labor charge. Copies should only be available when they relate to municipal business. Labor threshold should be one (1) hour. A better definition of department is needed.

Phil Noblett – Attorney for City of Chattanooga; Expressed concern about the constitutionality of the proposed schedule because there is no reference as to how the State will cover the cost that the city and local governments will incur to provide copies for public records. Commented that the fees per copy are too low, threshold is too low, and that it will take too much effort to aggregate time because of all the paperwork that will be necessary.

Ann Butterworth announced a fifteen (15) minute break.

After the break Ann Butterworth reviewed PC 1179, specifically focusing on the General Assembly's directive to the OORC to develop a schedule of fees and a separate policy for frequent and multiple requests. She also reviewed what record custodians can currently charge a requestor for copies of records, emphasizing that the fee must reflect the custodian's actual cost.

Elisha Hodge read the comments that were submitted via email.

Frank Gibson suggested that the comments be presented to the Committee and not read aloud. The decision was made to continue to read the comments for purposes of getting them into the record as promised when the comments were solicited.

Ann Butterworth read summarized comments that were also received by the OORC. Ann then apologized for any comments that may have been overlooked and acknowledged that a large number of comments were not read because they were not received by the deadline for submission of comments. Ann commented on what the process will be regarding completion of the schedule and closed by announcing the next meeting of the ACOG is scheduled for Monday, September 15, 2008, at 8:00 a.m. CST in Legislative Plaza Room 16.

During the meeting, a slide was displayed on the projector encouraging those who still wanted to comment of the proposed schedule to submit emails to open.records@state.tn.us by close of business on September 5, 2008.

Persons in Attendance at the hearing: (signed the sign-in sheet)

Megan Lyons – JPGR

Holly Salmons – JPGR

Josh Jones – MTAS –UT

Kristen Corn – City of Franklin

Lanaii Benne – City of Franklin

Faye Sandosky – Citizen

Stewart Clifton – League of Women Voters

Jami Awalt – TSLA

Ken Jakes – Citizen

Jeanne Broadwell – TBI

Gene Ward – NES

Tim Shelton – Anderson County

Roger Horner – City of Brentwood

Jim Thomas – City of Goodlettsville Organization

Nathan Ridley – Lobbyist

Whit Adamson – Tennessee Association of Broadcasters

Craig Willis – Assistant County Attorney, Shelby County

Mark Rawlston – Government

Captain. Mark Sirois – Government

Sergeant John Hames – Government

Philip Hostettler – Citizen

Byron Grizzle – Government

Greg Worley – Government

John Stern – Citizen

Larry Burris – MTSU

Sam Kennedy – Press

Elizabeth Blackstone – Press

Jeffrey Blackshear – Government